
**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

No. 77-631

**DOUGLAS M. COSTLE, ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY, and
GEORGE R. ALEXANDER, JR.,
REGIONAL ADMINISTRATOR,**

Petitioners,

v.

REPUBLIC STEEL CORPORATION, et al.,
Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**SUPPLEMENTAL BRIEF FOR RESPONDENT
REPUBLIC STEEL CORPORATION IN OPPOSITION**

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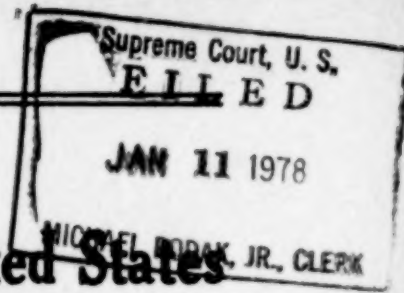
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This supplemental brief is filed in order to advise the Court of the enactment of the pending amendments to the Federal Water Pollution Control Act which were referred to in the brief in opposition for Republic Steel Corporation (Br. in Opp. 17). These amendments, known as the Clean Water Act of 1977, Pub. L. 95-217, 91 Stat. 1566, were passed by both Houses of Congress on December 15 (123 Cong. Rec. S19685, H12964) (daily ed.

Dec. 15, 1977), and were signed into law by the President on December 27. The portions of the Act which are cited in this brief appear in the Appendix, *infra*.

The enactment of the Clean Water Act provides further reasons why the petition should be denied. These amendments create new mechanisms for administratively setting compliance dates after July 1, 1977, for achievement of Section 301(b)(1) effluent limitations.¹ These mechanisms are a further indication that the decision below has very limited applicability and no practical consequence worthy of this Court's consideration. By expressly providing for the establishment of achievable, yet strict compliance schedules beyond July 1, 1977 in appropriate situations, these new mechanisms substantially reduce the possibility of litigation arising from compliance schedules in permits.

These mechanisms, which are briefly summarized here, give the Administrator considerable flexibility in establishing deadlines for compliance with Section 301(b)(1) requirements. First, Section 56 of the Clean Water Act adds a new provision which authorizes the Administrator to "grant an extension" of the July 1, 1977 date referred to in Section 301(b)(1)(A) to April 1, 1979, if certain conditions exist. Second, Section 56 amends prior law so as to authorize the Administrator to issue an order specifying a "reasonable" time for compliance with any final deadline, taking into account the seriousness of the violation

¹The Clean Water Act does not amend Section 301(b)(1)(A) of the Federal Water Pollution Control Act, nor does it appear to contain any provision which represents a legislative resolution of the narrow issue in this case. Consequently, there is no need to remand this case for reconsideration by the court below in light of the new amendments. *Cf. Montana Power Co. v. EPA*, 98 Sup. Ct. 40 (1977) (summary opinion vacating and remanding for reconsideration).

and any good faith efforts to comply with applicable requirements of the Act. Unlike the first mechanism, compliance schedules established under this second mechanism are not statutorily required to terminate before April 1, 1979.

For these reasons, in addition to the reasons discussed in the brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

1. Section 56 of the Clean Water Act of 1977, Pub. L. 95-217, provides in pertinent part:

(a) The third sentence of section 309(a)(2) of the Federal Water Pollution Control Act is amended by striking out "the Administrator shall" and by inserting in lieu thereof the following: "except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall".

(b) Section 309(a)(4) of the Federal Water Pollution Control Act is amended by striking out the second sentence thereof.

(c) Section 309(a) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraphs:

"(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

"(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this Act or in any permit issued under this Act, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any

extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 402 of this Act was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 301(b)(1)(A) to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979."

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